

# High Court Hints Easing Of Disclosure of Bugging

*Grants Hoffa and Clay New Hearings  
—Indicates Files in Intelligence Cases  
May Not Have to Be Opened*

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By FRED P. GRAHAM

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WASHINGTON, March 24—The Supreme Court indicated today that the Justice Department might yet be spared the necessity of disclosing the transcripts of conversations overheard in foreign intelligence eavesdropping.

In two brief, unsigned opinions and a tart concurring opinion by Justice Potter Stewart, the Court told the Justice Department that its top officials had become unduly concerned that a Court decision on March 10 would force the Government to disclose intelligence secrets.

The Court sent back for consideration in the lower courts appeals brought by Cassius Clay, former heavyweight box-

ing champion who prefers to be known as Muhammad Ali, and James R. Hoffa, president of the International Brotherhood of Teamsters, and a dozen other cases in which questions of Government eavesdropping had been raised.

However, no convictions were reversed by the Supreme Court, and today's decisions made it appear that defendants' rights to see Government eavesdrop transcripts were to be more restricted than the ruling on March 10 had seemed to say.

In that decision the Court ruled, in an opinion by Justice Byron R. White, that any crim-

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# High Court Indicates an Easing Of Disclosure in Eavesdropping

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inal defendant who had been overheard over an illegal Government listening device must be shown transcripts of his conversations.

Last week Attorney General John N. Mitchell told a Senate subcommittee that the ruling could compromise some national security secrets. Solicitor General Erwin N. Griswold filed a petition for a rehearing, asking the Court to exclude foreign intelligence surveillance from the decision. Otherwise, he said, the Government may stop informing the Supreme Court of some of its surveillance.

## Careful Reading Suggested

Today the Court refused to rehear the case, but Justice Potter Stewart said that a careful reading of the opinion of March 10 would show that while the Court had acted on "illegal" eavesdropping, it had not said whether or not surveillance in search of foreign intelligence information was illegal.

"One might suppose that all of this should be entirely clear to any careful reader of the Court's opinion," Justice Stewart said. "But 10 years of experience here have taught me that the most carefully written opinions are not always carefully read—even by those most directly concerned."

Justice Stewart said that although Mr. Griswold had "mystifyingly" sought to concede in oral arguments that the foreign intelligence listening devices were unconstitutional under the Fourth Amendment, the Court had never ruled one way or the other on the subject.

The Government, Justice Stewart said, will not necessarily be required to disclose the transcript of "foreign intelligence" wiretaps when the cases reach the trial courts.

The trial judges will examine the transcripts secretly, Justice Stewart said, and will disclose them only if they conclude that this type of surveillance is unconstitutional.

## Further Test Expected

This statement indicates that the Justice Department may eventually get all that it asked in the petition for rehearing, even though the petition was denied. The Government hinted, without expressly saying so, that some of its "foreign intelligence" eavesdropping had involved wiretapping of foreign embassies here. It asked the Court to make a special exception for such surveillance.

Whether or not the trial judges agree with the Government that foreign intelligence eavesdropping is not unconstitutional under circumstances in which Government eavesdrop-

ping for other purposes would be, a question of this importance is certain to be appealed to the Supreme Court for the final decision.

The Justice Department won one minor point today when the Court upheld the tax evasion conviction of a New England Mafia figure, Louis J. Taglianetti, in one of the two unsigned opinions. The Court held that Taglianetti had no right to see the transcripts of overheard conversations in which it was impossible to say whether or not his voice appeared.

Nothing in the decision of March 10 "requires an adversary proceeding and full disclosure for resolution of every issue raised by an electronic surveillance," the Court declared.

When the cases of Muhammad Ali, Hoffa and other appellants get back to the trial level the judges will examine the transcripts in secret to decide, first, if the eavesdropping was illegal and second, whether the appellants have standing under the Fourth Amendment to object to the use of the eavesdrop information.

## Both Answers Must Be Yes

If the judges conclude that the answer to both questions is yes, the transcripts will be given to the appellants. The convictions will be overturned if the appellants can show that the Government got evidence or leads from the transcript that helped the Government's case.

The Justice Department has contended in each instance that the surveillance did not affect the trials.

Muhammad Ali, formerly known as Cassius Clay, is free on bond in the appeal of a sentence of five years' imprisonment and \$10,000 fine for refusing to submit to induction into the Army. Hoffa is serving an eight-year-term at the Lewisburg, (Pa.) Federal prison for jury tampering. He is appealing a five-year sentence for fraud in re-use of teamster pension funds.

In another eavesdrop ruling today, the Court ruled, 5 to 3, that retroactive effect would not be given to its decision of 1967, in the case of Katz v. United States, that Governmental eavesdropping without a physical trespass violates the Fourth Amendment.

The Court had previously held that Government agents violate the Fourth Amendment when they trespass to plant listening devices but the Katz case added wiretapping and other surveillance carried out without a physical intrusion into private premises.

Today's case concerned five men convicted of importing 209



United Press International

**CASES TO BE RECONSIDERED:** The cases of James R. Hoffa, left, teamsters' president, and Muhammad Ali, former boxing champion, were sent back to lower courts after questions of Government's eavesdropping were raised.

pounds of pure heroin into the United States from France—the largest illegal shipment of heroin ever intercepted by United States officials.

## Listened From Next Room

Federal agents trailed them to the Waldorf-Astoria Hotel in New York, and took a room adjacent to the one in which the five men were discussing the transaction. The agents recorded their conversation by a microphone placed at the bottom of the door separating the rooms. According to the agents the device did not penetrate into the suspects' room.

The Supreme Court ruled today in an opinion by Justice Stewart that the Katz decision would be applied only to surveillances carried out after Dec. 18, 1967, when the Katz ruling was announced. Because the primary purpose of the Katz rule was to deter unconstitutional surveillance by the police, there are no overriding reasons for giving it retroactive effect, he said.

Because the eavesdropping in the Waldorf-Astoria was in 1965, the convictions were upheld. The appellants, who received terms of from 10 to 20 years, are Samuel Desist, Frank Dioguardi, Jean Claude le Franc, Jean Nerbia, and Anthony Sutera.

Justices William O. Douglas, Abe Fortas and John M. Harlan dissented. Justice Thurgood Marshall, who was Solicitor General in earlier stages of the case, did not take part in the decision.

Abraham Glasser of New York argued for the appellants. Francis X. Beytagh Jr. of the Solicitor General's office argued for the Government.

In a similar case the Court upheld today by a 6-to-3 vote

the conviction on extortion charges of Thomas R. Kaiser, in Nassau County in May, 1967. The Court ruled on the ground that the wiretapping that led to Kaiser's conviction had been carried out before the date of the Katz case.

Peter L. F. Sabbatino of New York argued for Kaiser. District Attorney William Cahn of Nassau County argued for the state.

## Clay Is 'Thankful'

DENTON, Tex., March 24 (UPI)—Cassius Clay said today that he was "thankful" for the Supreme Court decision that ordered a rehearing of his conviction. He made the comment while resting at a motel here before making an appearance at a black arts festival at North Texas State University.